

MEMORANDUM OF LAW

DATE: July 31, 1995

TO: D. Cruz, Gonzalez, Risk Management Director

FROM: City Attorney

SUBJECT: Management Benefits Plan for Part-Time Unclassified Employees

QUESTION PRESENTED

May a part-time unclassified employee receive a full allotment of Management Benefits dollars?

SHORT ANSWER

Yes. However, if some part-time unclassified employees receive full Management Benefits, all part-time unclassified employees must be treated in the same manner. Alternatively, you may reduce the Management Benefits of the two employees so that their benefits are pro-rated in the same manner as other part-time unclassified employees.

BACKGROUND

It has recently come to your attention that two unclassified part-time employees are receiving a full allotment of Management Benefit Plan ("MBP") dollars. However, the reason behind the decision to grant full benefits is unclear. Thus, you have asked if this is a permissible practice.

ANALYSIS

The MBP has no written plan document because it simply piggy-backs onto the City's Flexible Plan. The benefits available and the enrollment period are the same for both plans. Part-time City employees who are eligible for Management Benefits normally receive an allotment which is prorated according to the number of hours they work. The sliding scale for MBP benefits is a result of a decision reached in 1985 after discussions between this office and the Manager's office. This is the Citywide practice.

Under the parameters of this decision, the two employees in question are receiving benefits which exceed those of other employees in their position. This conflicts with the standard City compensation guidelines.

Traditional City compensation rules provide equal compensation for equal work. For example, San Diego Charter ("Charter") section 130 provides in pertinent part: "The Council shall . . . establish a

schedule of compensation for officers and employees in the Classified Service, which shall establish a minimum and maximum for any grade and provide uniform compensation for like service." (Emphasis added.) This Charter section applies only to classified City employees, however, the concept of equal pay for equal work is not limited to only classified employees. It applies with equal vigor in all areas of employment. Both California and Federal statutes address discrimination in pay based upon protected classes. Additionally, going beyond the specifically enumerated classes in the statutes, courts have said discrimination is prohibited whenever it is "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." *Murgia v. Municipal Court*, 15 Cal. 3d 286, 300 (1975).

Your memorandum indicates that the extension of full Management Benefits to the two part-time employees is the result of either an arbitrary classification or a mistake that occurred when the benefits were initially granted. No articulable reason has been put forth to explain the disparate treatment of City employees with regard to their Management Benefits. Regardless of how the discrepancy occurred, it should be corrected now.

We advise, therefore, that the benefits for the two employees be reduced and prorated to accurately reflect the number of hours worked by the employees. Conversely, you may increase the level of benefits for all other part-time unclassified employees so that all such employees receive the same level of Management Benefits as is now being received by the two employees. The choice is strictly a policy decision for Risk Management. The only legal requirement is that employees be compensated for like services at an equal rate.

Please let me know if you have any further questions.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:352.3(x043.2)

cc Cathy Lexin, Labor Relations Manager

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